

S. 774

IN THE SENATE OF THE UNITED STATES

Mr. HATCH (for himself, Mr. THURMOND, and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

Entitled "The Freedom of Information Reform Act".

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

FEES AND WAIVERS

4 SEC. 2. Paragraph (4)(A) of section 552(a) of title 5,
5 United States Code, is amended to read as follows:

6 “(4)(A)(i) In order to carry out the provisions of this
7 section, each agency shall promulgate regulations, pursuant
8 to notice and receipt of public comment, specifying the sched-
9 ule of fees applicable to the processing of requests under this
10 section and establishing procedures and guidelines for deter-
11 mining when such fees should be waived or reduced. Such

1 schedules shall conform to the guidelines which shall be pro-
2 mulgated, pursuant to notice and receipt of public comment,
3 by the Office of Management and Budget and which shall
4 provide for a uniform schedule of fees for all agencies. Such
5 regulations—

6 “(a) shall provide for the payment of all costs rea-
7 sonably and directly attributable to responding to the
8 request, which shall include reasonable standard
9 charges for the costs of services by agency personnel in
10 search, duplication, and other processing of the re-
11 quest. The term ‘processing’ does not include services
12 of agency personnel in resolving issues of law and
13 policy of general applicability which may be raised by
14 a request, but does include services involved in exam-
15 ining records for possible withholding or deletions to
16 carry out determinations of law or policy. Such regula-
17 tions may also provide for standardized charges for cat-
18 egories of requests having similar processing costs,

19 “(b) shall provide that no fee is to be charged by
20 any agency with respect to any request or series of re-
21 lated requests whenever the costs of routine collection
22 and processing of the fee are likely to equal or exceed
23 the amount of the fee, and

24 “(c) in the case of any request or series of related
25 requests for records containing commercially valuable

1 technological information which was generated or pro-
2 cured by the Government at substantial cost to the
3 public, is likely to be used for a commercial purpose,
4 and will deprive the Government of its commercial
5 value, may provide for the charging of a fair value fee
6 or royalties, or both, in addition to or in lieu of any
7 processing fees otherwise chargeable, taking into ac-
8 count such factors as the estimated commercial value
9 of the technological information, its costs to the Gov-
10 ernment, and any public interest in encouraging its uti-
11 lization.

12 Nothing in this subparagraph shall supersede fees chargeable
13 under a statute specifically providing for setting the level of
14 fees for particular types of records.

15 “(ii) With respect to search and duplication charges,
16 documents shall be furnished without charge or at a reduced
17 charge where the agency determines that waiver or reduction
18 of the fee is in the public interest because furnishing the in-
19 formation can be considered as primarily benefiting the gen-
20 eral public and not the commercial or other private interests
21 of the requester. With respect to all other charges, docu-
22 ments shall be furnished without such charges where the
23 agency determines that the information is not requested for a
24 commercial use and the request is being made by or on behalf
25 of (a) an individual, or educational, or noncommercial scien-

1 tific institution, whose purpose is scholarly or scientific re-
2 search; (b) a representative of the news media; or (c) a non-
3 profit group that intends to make the information available to
4 the general public.

5 “(iii) One-half of the fees collected under this section
6 shall be retained by the collecting agency to offset the costs
7 of complying with this section. The remaining fees collected
8 under this section shall be remitted to the Treasury’s general
9 fund as miscellaneous receipts.”.

10 TIME LIMITS

11 SEC. 3. Paragraph (6) of section 552(a) of title 5, United
12 States Code, is amended to read as follows:

13 “(6)(A) Except as otherwise provided in this paragraph,
14 each agency, upon any request for records made under para-
15 graph (1), (2), or (3) of this subsection, shall—

16 “(i) determine within ten working days after the
17 receipt of any such request whether to comply with
18 such request and shall immediately notify the requester
19 of such determination and the reasons therefor, and of
20 the right of such person to appeal to the head of the
21 agency any adverse determination; and

22 “(ii) make a determination with respect to any
23 appeal within twenty working days after the receipt of
24 such appeal. If on appeal the denial of the request for
25 records is in whole or in part upheld, the agency shall

1 notify the requester of the provisions for judicial review
2 of that determination under paragraph (4) of this sub-
3 section.

4 “(B) In unusual circumstances as defined in this subpar-
5 agraph, the time limits prescribed in either clause (i) or clause
6 (ii) of subparagraph (A) may be extended by written notice to
7 the requester setting forth the reasons for such extension and
8 the date on which a determination is expected to be dis-
9 patched. No such notice shall specify a date that would result
10 in extensions of more than an aggregate of thirty working
11 days. As used in this subparagraph, ‘unusual circumstances’
12 means, but only to the extent reasonably necessary to the
13 proper processing of the particular request—

14 “(i) the need to search for and collect the request-
15 ed records from field facilities or other establishments
16 that are separate from the office processing the re-
17 quest;

18 “(ii) the need to search for, collect, and appropri-
19 ately examine a voluminous amount of separate and
20 distinct records which are demanded in a single re-
21 quest;

22 “(iii) the need for consultation, which shall be
23 conducted with all practicable speed, with another
24 agency having a substantial interest in the determina-
25 tion of the request or among two or more components

1 of the agency having substantial subject-matter interest
2 therein;

3 “(iv) a request which the head of the agency has
4 specifically stated in writing cannot be processed
5 within the time limits stated in paragraph (6)(A) with-
6 out significantly obstructing or impairing the timely
7 performance of a statutory agency function;

8 “(v) the need for notification of submitters of in-
9 formation and for consideration of any objections to
10 disclosure made by such submitters; or

11 “(vi) an unusually large volume of requests or ap-
12 peals at an agency, creating a substantial backlog.

13 “(C) Any requester shall be deemed to have exhausted
14 his administrative remedies with respect to such request if
15 the agency fails to comply with the applicable time limit pro-
16 visions of this paragraph. If the Government can show excep-
17 tional circumstances and that the agency is exercising due
18 diligence in responding to the request, the court may retain
19 jurisdiction and allow the agency additional time to complete
20 its review of the records. An agency shall not be considered
21 to have violated the otherwise applicable time limits until a
22 court rules on the issue.

23 “(D) Upon any determination by an agency to comply
24 with a request for records, the records shall be made prompt-
25 ly available to the requester, subject to the provisions of

1 paragraph (7). Any notification of denial of any request for
2 records under this subsection shall set forth the names and
3 titles or positions of each person responsible for the denial of
4 such request.

5 “(E) Each agency shall promulgate regulations, pursu-
6 ant to notice and receipt of public comment, by which a re-
7 quester who demonstrates a compelling need for expedited
8 access to records shall be given expedited access.”.

9 BUSINESS CONFIDENTIALITY PROCEDURES

10 SEC. 4. Section 552(a) of title 5, United States Code, is
11 amended by adding after paragraph (6) the following new
12 paragraph:

13 “(7)(A) Each agency shall promulgate regulations, pur-
14 suant to notice and receipt of public comment, specifying pro-
15 cedures by which—

16 “(i) a submitter may be required to designate, at
17 the time it submits or provides to the agency or there-
18 after, any information consisting of trade secrets, or
19 commercial, research, financial, or business information
20 which is exempt from disclosure under subsection
21 (b)(4);

22 “(ii) the agency shall notify the submitter that a
23 request has been made for information provided by the
24 submitter, within ten working days after the receipt of
25 such request, and shall describe the nature and scope

1 of the request and advise the submitter of his right to
2 submit written objections in response to the request;

3 “(iii) the submitter may, within ten working days
4 of the forwarding of such notification, submit to the
5 agency written objection to such disclosure, specifying
6 all grounds upon which it is contended that the infor-
7 mation should not be disclosed; and

8 “(iv) the agency shall notify the submitter of any
9 final decision regarding the release of such information.

10 “(B) An agency is not required to notify a submitter
11 pursuant to subparagraph (A) if—

12 “(i) the information requested is not designated by
13 the submitter as exempt from disclosure in accordance
14 with agency regulations promulgated pursuant to sub-
15 paragraph (A)(i), if such designation is required by the
16 agency;

17 “(ii) the agency determines, prior to giving such
18 notice, that the request should be denied;

19 “(iii) the disclosure is required by law (other than
20 this section) and the agency notified the submitter of
21 the disclosure requirement prior to the submission of
22 the information;

23 “(iv) the information lawfully has been published
24 or otherwise made available to the public; or

1 “(v) the agency is a criminal law enforcement
2 agency that acquired the information in the course of a
3 lawful investigation of possible violations of criminal
4 law.

5 “(C) Whenever an agency notifies a submitter of the
6 receipt of a request pursuant to subparagraph (A), the agency
7 shall notify the requester that the request is subject to the
8 provisions of this paragraph and that notice of the request is
9 being given to a submitter. Whenever an agency notifies a
10 submitter of final decision pursuant to subparagraph (A), the
11 agency shall at the same time notify the requester of such
12 final decision.

13 “(D) Whenever a submitter has filed objections to dis-
14 closure of information pursuant to subparagraph (A)(iii), the
15 agency shall not disclose any such information for ten work-
16 ing days after notice of the final decision to release the re-
17 quested information has been forwarded to the submitter.

18 “(E) The agency’s disposition of the request and the
19 submitter’s objections shall be subject to judicial review pur-
20 suant to paragraph (4) of this subsection. If a requester files a
21 complaint under this section, the administrative remedies of a
22 submitter of information contained in the requested records
23 shall be deemed to have been exhausted.

1 “(F) Nothing in this paragraph shall be construed to be
2 in derogation of any other rights established by law protect-
3 ing the confidentiality of private information.”.

4 JUDICIAL REVIEW

5 SEC. 5. Section 552(a)(4) of title 5, United States Code,
6 is amended—

7 (1) by amending subparagraph (B) to read as fol-
8 lows:

9 “(B) On complaint filed by a requester within one hun-
10 dred and eighty days from the date of final agency action or
11 by a submitter after a final decision to disclose submitted in-
12 formation but prior to its release, the district court of the
13 United States in the district in which the complainant re-
14 sides, or has his principal place of business, or in which the
15 agency records are situated, or in the District of Columbia,
16 has jurisdiction—

17 “(i) to enjoin the agency from withholding agency
18 records and to order the production of any agency rec-
19 ords improperly withheld from the requester;

20 “(ii) to enjoin the agency from any disclosure of
21 records which was objected to by a submitter under
22 paragraph (7)(A)(iii) or which would have been objected
23 to had notice been given as required by paragraph
24 (7)(A)(i); or

1 “(iii) to enjoin the agency from failing to perform
2 its duties under sections (a) (1) and (2).”.

3 (2) by redesignating subparagraphs (C), (D), (E),
4 (F), and (G) as subparagraphs (F), (G), (H), (I), and
5 (J), respectively, and by adding after subparagraph (B)
6 the following new subparagraphs:

7 “(C) In an action based on a complaint—

8 “(i) by a requester, the court shall have jurisdic-
9 tion over any submitter of information contained in the
10 requested records, and any such submitter may inter-
11 vene as of right in the action; and

12 “(ii) by a submitter, the court shall have jurisdic-
13 tion over any requester of records containing informa-
14 tion which the submitter seeks to have withheld, and
15 any such requester may intervene as of right in the
16 action.

17 “(D) The agency that is the subject of the complaint
18 shall promptly, upon service of a complaint—

19 “(i) seeking the production of records, notify each
20 submitter of information contained in the requested rec-
21 ords that the complaint was filed; and

22 “(ii) seeking the withholding of records, notify
23 each requester of the records that the complaint was
24 filed.

1 “(E) In any case to enjoin the withholding or the disclo-
2 sure of records, or the failure to comply with subsection (a)
3 (1) or (2), the court shall determine the matter de novo. The
4 court may examine the contents of requested agency records
5 in camera to determine whether such records or any part
6 thereof shall be withheld under any of the exemptions set
7 forth in subsection (b) of this section. The burden is on the
8 agency to sustain its action to withhold information and the
9 burden is on any submitter seeking the withholding of infor-
10 mation.”; and

11 (3) in redesignated subparagraph (H)—

12 (A) by adding “or any submitter who is a
13 party to the litigation” after “United States”; and

14 (B) by striking out “complainant” and insert-
15 ing in lieu thereof “requester”.

16 PUBLIC RECORD REQUESTS

17 SEC. 6. Section 552(a) of title 5, United States Code, is
18 amended by adding at the end thereof the following new
19 paragraph:

20 “(8) In any instance in which a portion of the records
21 requested under this subsection consists of newspaper clip-
22 pings, magazine articles, or any other item which is a public
23 record or otherwise available in public records, the agency
24 may offer the requester a choice of (A) furnishing the request-
25 er with an index identifying such clippings, articles, or other

1 items by date and source, provided that such index is already
2 in existence, or (B) notwithstanding the waiver requirements
3 contained in this section, furnishing the requester with copies
4 of such clippings, articles, or other items at the reasonable
5 standard charge for duplication established in the agency's
6 fee schedule."

7

CLARIFY EXEMPTIONS

8 SEC. 7. So much of section 552(b) of title 5, United
9 States Code, as precedes paragraph (1) thereof is amended to
10 read as follows:

11 "(b) The compulsory disclosure requirements of this sec-
12 tion do not apply to matters that are—"

13

MANUALS AND EXAMINATION MATERIALS

14 SEC. 8. Section 552(b)(2) of title 5, United States Code,
15 is amended by inserting a comma in lieu of the semicolon at
16 the end thereof and adding the following: "including such
17 materials as (A) manuals and instructions to investigators,
18 inspectors, auditors, or negotiators, to the extent that disclo-
19 sure of such manuals and instructions could reasonably be
20 expected to jeopardize investigations, inspections, audits, or
21 negotiations, and (B) examination material used solely to de-
22 termine individual qualifications for employment, promotion,
23 or licensing to the extent that disclosure could reasonably be
24 expected to compromise the objectivity or fairness of the ex-
25 amination process;"

PERSONAL PRIVACY

2 SEC. 9. Section 552(b)(6) of title 5, United States Code,
3 is amended to read as follows:

4 “(6) records or information concerning individuals,
5 including compilations or lists of names and addresses
6 that could be used for solicitation purposes, the release
7 of which could reasonably be expected to constitute a
8 clearly unwarranted invasion of personal privacy;”.

LAW ENFORCEMENT

10 SEC. 10. (a) Section 552(b)(7) of title 5, United States
11 Code, is amended to read as follows:

“(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) would constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency con-

19 ADDITIONAL EXEMPTIONS

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1 “(10) technical data that may not be exported
2 lawfully outside the United States without an approval,
3 authorization, or a license under Federal export laws,
4 except that this section shall apply to such data if reg-
5 ulations promulgated under such laws authorize the
6 export of such data without restriction to any person
7 and any destination; or

8 “(11) records or information maintained or origi-
9 nated by the Secret Service in connection with its pro-
10 tective functions to the extent that the production of
11 such records or information could reasonably be ex-
12 pected to adversely affect the Service's ability to per-
13 form its protective functions.”.

14 REASONABLY SEGREGABLE

15 SEC. 12. Section 552(b) of title 5, United States Code,
16 is amended by adding after the last sentence thereof the fol-
17 lowing: “In determining which portions are reasonably segre-
18 gable in the case of records containing material covered by
19 paragraphs (1) or (7) of this subsection, the agency may con-
20 sider whether the disclosure of particular information would,
21 in the context of other information available to the requester,
22 cause the harm specified in such paragraph.”.

23 PROPER REQUESTS

24 SEC. 13. Section 552(a)(3) of title 5, United States
25 Code, is amended to read as follows:

1 “(3)(A) Except with respect to the records made availa-
2 ble under paragraphs (1) and (2) of this subsection, each
3 agency, upon any request by a requester who is a United
4 States person for records which (i) reasonably describes such
5 records and (ii) is made in accordance with published rules
6 stating the time, place, fees (if any), and procedures to be
7 followed, shall make the records promptly available to the
8 requester.

9 “(B) The time limits prescribed in subparagraph (A) of
10 paragraph 6 shall be tolled whenever the requester (or any
11 person on whose behalf the request is made) is a party to any
12 ongoing judicial proceeding or administrative adjudication in
13 which the Government is also a party and may be requested
14 to produce the records sought. Nothing in this subparagraph
15 shall be construed to bar (i) a request for any records which
16 are not related to the subject matter of such pending proceed-
17 ing, or (ii) a request for any records which have been denied
18 to a party in the course of a judicial proceeding or adminis-
19 trative adjudication that is no longer pending.

20 “(C) The Attorney General, in accordance with public
21 rulemaking procedures set forth in section 553 of this title,
22 may by regulation prescribe such limitations or conditions on
23 the extent to which and on the circumstances or manner in
24 which records requested under this paragraph or under sec-
25 tion 552a of this title shall be made available to requesters

1 who are persons imprisoned under sentence for a felony
2 under Federal or State law or who are reasonably believed to
3 be requesting records on behalf of such persons, as he finds to
4 be (i) appropriate in the interests of law enforcement, or for-
5 eign relations or national defense, or of the efficient adminis-
6 tration of this section, and (ii) not in derogation of the public
7 information purposes of this section.”.

8

ORGANIZED CRIME

9 SEC. 14. Section 552 of title 5, United States Code, is
10 amended by adding a new subsection (c) as follows and redes-
11 ignating the current subsections (c), (d), and (e) as (d), (e), and
12 (f) respectively.

13 “(c) Nothing in this section shall be deemed appli-
14 cable to documents compiled in any lawful investiga-
15 tion of organized crime, designated by the Attorney
16 General for the purposes of this subsection and con-
17 ducted by a criminal law enforcement authority for law
18 enforcement purposes, if the requested document was
19 first generated or acquired by such law enforcement
20 authority within five years of the date of the request,
21 except where the agency determines pursuant to regu-
22 lations promulgated by the Attorney General that there
23 is an overriding public interest in earlier disclosure or
24 in longer exclusion not to exceed three years. Notwith-
25 standing any other provision of law, no document de-

1 scribed in the preceding sentence may be destroyed or
2 otherwise disposed of until the document is available
3 for disclosure in accordance with subsections (a) and (b)
4 of this section for a period of not less than ten years.”.

5 REPORTING UNIFORMITY

6 SEC. 15. Section 552(e) of title 5, United States Code
7 (as redesignated), is amended—

8 (1) by striking out “calendar” the second and
9 fourth places it appears and inserting in lieu thereof
10 “fiscal”;

11 (2) by striking out “March” each place it appears
12 and inserting in lieu thereof “December”;

13 (3) in paragraph (4), by striking out “subsection
14 (a)(4)(F)” and inserting in lieu thereof “subsection
15 (a)(4)(I)”;

16 (4) in the next to last sentence, by striking out
17 “subsections (a)(4) (E), (F), and (G)” and inserting in
18 lieu thereof “subsections (a)(4) (H), (I), and (J).”.

19 TECHNICAL DATA PROCEDURES

20 SEC. 16. Title 5 of United States Code is amended by
21 adding after section 559 a new section 560 as follows:

22 “SEC. 560. Each Federal agency maintaining technical
23 data exempt under subsection (b)(10) of section 552 of this
24 title shall promulgate regulations establishing registration (in-
25 cluding certification) procedures and criteria under which

1 qualified United States individuals and business concerns may
2 obtain copies of such Government-owned technical data for
3 purposes of bidding on Government contracts. No data ob-
4 tained under such procedures may be redisseminated or ex-
5 ported except as provided by law.”.

6

DEFINITIONS

7

SEC. 17. Section 552(f) of title 5, United States Code
8 (as redesignated), is amended to read as follows:

9

“(f) For purposes of this section—

10

“(1) ‘agency’ means any executive department,
11 military department, Government corporation, Govern-
12 ment-controlled corporation, or other establishment in
13 the executive branch of the Government (including the
14 Executive Office of the President), or any independent
15 regulatory agency;

16

“(2) ‘submitter’ means any person who has sub-
17 mitted to an agency (other than an intelligence
18 agency), or provided an agency access to, trade se-
19 crets, or commercial, research, or financial information
20 (other than personal financial information) in which the
21 person has a commercial or proprietary interest;

22

“(3) ‘requester’ means any person who makes or
23 causes to be made, or on whose behalf is made, a
24 proper request for disclosure of records under subsec-
25 tion (a);

1 “(4) ‘United States person’ means a citizen of the
2 United States or an alien lawfully admitted for perma-
3 nent residence (as defined in section 101(a)(20) of the
4 Immigration and Nationality Act, 8 U.S.C.
5 1101(a)(20)), an unincorporated association a substan-
6 tial number of members of which are citizens of the
7 United States or aliens lawfully admitted for perma-
8 nent residence, or a corporation which is incorporated
9 in the United States, but does not include a corpora-
10 tion or an association that is a foreign power, as de-
11 fined in section 101(a) of the Foreign Intelligence Sur-
12 veillance Act of 1978 (50 U.S.C. 1801(a));

13 “(5) ‘working days’ means every day excluding
14 Saturdays, Sundays, and Federal legal holidays; and

15 “(6) ‘organized crime’ means those structured and
16 disciplined associations of individuals or of groups of in-
17 dividuals who are associated for the purpose of obtain-
18 ing monetary or commercial gains or profits, wholly or
19 in part by illegal means, while generally seeking to
20 protect and promote their activities through a pattern
21 of graft or corruption, and whose associations generally
22 exhibit the following characteristics:

23 “(A) their illegal activities are conspiratorial,

1 “(B) in at least part of their activities, they
2 commit acts of violence or other acts which are
3 likely to intimidate,

4 “(C) they conduct their activities in a me-
5 thodical or systematic and in a secret fashion,

6 “(D) they insulate their leadership from
7 direct involvement in illegal activities by their or-
8 ganizational structure,

9 “(E) they attempt to gain influence in gov-
10 ernment, politics, and commerce through corrup-
11 tion, graft, and illegitimate means, and

12 “(F) they engage in patently illegal enter-
13 prises such as dealing in drugs, gambling, loan-
14 sharking, labor racketeering, or the investment of
15 illegally obtained funds in legitimate businesses.”.

○